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No. 785

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1960

ARCO AUTO CARRIERS, INC.,
ASSOCIATED TRANSPORTS, INC.,
AUTOMOBILE TRANSPORTS, INC. OF DELAWARE,
CENTRAL TRUCKAWAY SYSTEM,
COMPLETE AUTO TRANSIT, INC.,
L. & L. TRANSPORT, INC. OF INDIANA,
FLEET CARRIER CORPORATION,
FUGATE & GIRTON DRIVEAWAY COMPANY, INC.,
KENOSHA AUTO TRANSPORT CO., INC.,
KING TRANSPORT,
TRUCKAWAY CORPORATION,
ROBERT R. WALKER, INC.,
UNITED TRANSPORTS, INC.,
AUTO TRANSPORTS, INC.,
BURNHAM'S VAN SERVICE,
BEKINS VAN LINES,
NORTH AMERICAN VAN LINES, INC.,
NATIONAL VAN LINES, INC.,
WEATHERS BROTHERS TRANSFER COMPANY, INC. — *Appellants*

v.

STATE OF ARKANSAS, EX. REL.
BRUCE BENNETT, ATTORNEY GENERAL — *Appellee*

ON APPEAL FROM THE
SUPREME COURT OF THE STATE OF ARKANSAS

JURISDICTIONAL STATEMENT

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WEATHERS BROTHERS TRANSFER COMPANY, INC. — *Appellants*

v.

STATE OF ARKANSAS, EX REL BRUCE BENNETT, ATTORNEY GENERAL — *Appellee*

ON APPEAL FROM THE
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JURISDICTIONAL STATEMENT

JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the Supreme Court of Arkansas entered on November 21, 1960, rehearing denied January 9, 1961, upholding the validity and constitutionality of an Arkansas Statute authorizing the

assessment and collection of *ad valorem* taxes upon motor vehicles and properties, owned or leased by non-resident certificated motor carriers of property, and non-resident owners, moving and being operated and driven wholly in interstate commerce, into, through and across the State of Arkansas, over irregular routes and not upon schedule, and submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINIONS BELOW

The opinion and decree of the Chancery Court of Pulaski County, Arkansas, Second Division, dated March 25, 1960, are unreported. The original opinion of the Supreme Court of Arkansas was rendered on November 21, 1960. It is unofficially unreported. The order of the Supreme Court of Arkansas denying a petition for rehearing was entered on January 9, 1961. Copy of the original opinion of November 21, 1960, of the Appellate Court, is attached hereto as Appendix "A" (Pages 1a-5a).

JURISDICTION

The opinion of the Supreme Court of Arkansas was delivered November 21, 1960 (R.324). The judgment of the Supreme Court of Arkansas was entered on November 21, 1960 (R.328). Rehearing denied January 9, 1961 (R.357). Notice of appeal filed January 24, 1961 (R. 361).

The jurisdiction of this Court is invoked under Title 28 U.S. Code, Section 1257 (2).

The Federal questions here sought to be reviewed were specifically and properly presented by briefs and petition to rehear (R.329), and were considered by, and determined adversely to the interest of the appellants by the Supreme

Court of Arkansas, as is reflected by Certificate as to Existence of a Federal Question ordered to be entered by the Court. Said Certificate appears at page 360 of the Record and is attached here as Appendix "B". (Pages 7a-8a).

Although the Supreme Court of Arkansas, in its opinion of November 21, 1960, specifically found that the appellants had "vigorously argued" the invalidity of the involved statute and its conflict with the Commerce Clause and the 14th Amendment to the Constitution of the United States (R.324), the Court, in its opinion, did not otherwise directly discuss the Federal questions here sought to be reviewed. It did, however, rely upon, and cite, three decisions of this Court in support of its holding the attacked statute to be valid. It is apparent the Supreme Court of Arkansas decided this case upon the constitutional issues raised, pleaded and argued by the appellants.

QUESTION PRESENTED

Whether the State of Arkansas may lawfully assess, levy and collect an *ad valorem* tax upon motor carrier properties owned or leased, used, operated and driven within, through and across the State of Arkansas, by nonresident motor carriers engaged in transportating property for compensation in interstate commerce, pursuant to Certificates of Public Convenience and Necessity issued by the Interstate Commerce Commission; and whether such tax, as levied and assessed, is violative of and contrary to Article 1, Section 8, Clause 3, the Commerce Clause, and Section 1 of Amendment No. 14 to the United States Constitution, and whether the Supreme Court of Arkansas erred in holding the assessment, levy and collection of such *ad valorem* tax to be valid and neither violative of nor contrary to the named provisions of the Federal Constitution.

STATUTES INVOLVED

The pertinent statutory provisions, Sections 84-601-615, inclusive, Arkansas Statutes, 1947, are set forth in Appendix "C" (Pages 9a-12a).

STATEMENT

Appellants are motor carriers domiciled outside of Arkansas, operating wholly in interstate commerce into, through and across the State of Arkansas, pursuant to Certificates of Public Convenience and Necessity issued to them by the Interstate Commerce Commission. 14 are transporters of automobiles by truckaway and driveaway methods. 5 are transporters of household goods by motor vehicles. None maintain any office, agent, equipment or property within the State of Arkansas.

Some of the appellants make deliveries within the State of Arkansas. Others merely traverse Arkansas highways enroute to destinations in States beyond Arkansas. Some deliver automobiles by the conventional transport method, whereby vehicles are loaded upon a double-deck trailer. Others engage in what is known as the drive-away method of delivery of automobiles, whereby one automobile is attached to another by means of a towbar or chain and driven over the highways, to destinations beyond the State of Arkansas. Household goods movers transport household goods by the trailer method, some making deliveries and pickups within the State of Arkansas and others merely traversing Arkansas highways, enroute to destinations beyond the State of Arkansas.

Pursuant to the provisions of Section 84-601-615, Ark. Statutes 1947, the State of Arkansas, for various years, assessed *ad valorem* taxes against the properties of the appellants. Believing that the State of Arkansas lacked

authority to make such assessments, or to enforce collection of *ad valorem* taxes upon their properties used and operated wholly in interstate commerce, the appellants refused payment of the tax. The State of Arkansas, through its Attorney General, as prescribed by statute, instituted suit in the Chancery Court of Pulaski County, Arkansas, Second Division, to collect alleged delinquent taxes and accrued statutory penalties.

Within the time prescribed by statute, the appellants, individually and collectively, filed their answer in the Chancery Court of Pulaski County, Arkansas, Second Division, wherein they raised the invalidity of the tax sought to be collected, and asserted that such tax and the assessment thereof were violative of, and contrary to, Article 1, Section 8, Clause 3, of the United States Constitution, commonly known as the Commerce Clause, and Section 1 of Amendment No. 14 to the Constitution of the United States. The original answer of the appellants, in the lower Court, consists of 28 separately numbered paragraphs, and included in, and as a part of, a large number of these separately numbered paragraphs, these appellants, jointly and severally, pleaded the invalidity of the tax and the action of State officials thereunder in making assessments thereof, as being contrary to, and violative of, the Commerce Clause and Due Process Amendment to the United States Constitution (R.11;37;63).

The Chancery Court of Pulaski County, Arkansas, Second Division, in its Memorandum Opinion and Order and in its Decree (R.110;131), specifically held that the statutes involved, and the action of the State officials thereunder, were neither violative of, nor contrary to, the Commerce Clause and the Due Process Amendment to the United States Constitution. The lower Court found that operations conducted in the transportation of automobiles

by the "drive-away system" were not subject to the "impact of the tax," (R.137) but neither the lower Court nor the Supreme Court of Arkansas made a specific finding that such tax was invalid or unconstitutional as applied to such drive-away operations. The Memorandum Opinion and Order is shown at page 110 of the Record; and Decree of the lower Court is found on page 131 of the Record. Upon appeal to the Supreme Court of Arkansas, these appellants, by original brief and by brief in support of a Petition for Rehearing, reiterated and consistently argued that the statute here involved, and the action of the Arkansas taxing officials thereunder, are and were contrary to and violative of Article 1, Section 8, Clause 3, the Commerce Clause and Amendment No. 14 to the Constitution of the United States.

Additionally, the appellants argued, by their pleadings and briefs, in the lower Court and the Appellate State Court, that due to their method of operation, their failure to operate upon schedule over regular routes, none of their respective properties acquired any tax situs within the State of Arkansas, and, therefore, the *ad valorem* tax sought to be collected from them was, in fact, either a tax levied upon interstate commerce and the instrumentalities of interstate commerce, or in effect a privilege tax for the exercise of their Certificates of Public Convenience and Necessity issued by the Interstate Commerce Commission, forbidden by the Commerce and Due Process Clauses of the United States Constitution. Additionally, the appellants challenged the formula under which the taxing authorities of Arkansas made *ad valorem* tax assessments against them, and especially that portion which failed to give them credit for taxes paid in other States upon equipment operated into, through and across the State of Arkansas; in failing to give them credit for liabilities incurred in the conduct of their business; for in-

cluding within the assessment the value of a Certificate of Public Convenience and Necessity issued by the Interstate Commerce Commission; for the inclusion of non-operating carrier properties; for the inclusion of property in transit, moving wholly in interstate commerce, originating points beyond the State of Arkansas and moving to destinations beyond the State of Arkansas.

The record reflects, and it is undisputed, that no part of the proceeds of the *ad valorem* tax here involved is, by the State of Arkansas, allocated to, or used in, the construction, maintenance and repair of Arkansas highways and bridges (Exhibit 1, Record 314). All moneys collected are allocated to the "General Revenue Fund" as a "Special Fund" to be used to reimburse the State for certain auditorial services rendered the counties, and any balance is remitted to the "County Aid Fund" of the various counties in the State (R.314).

THE QUESTIONS ARE SUBSTANTIAL

The issues here involved relate directly to the power of the State of Arkansas to assess, and levy and collect an *ad valorem* tax upon properties, including Certificates of Public Convenience and Necessity issued by the Interstate Commerce Commission, leased properties, property in transit, properties taxed by a State of domicile, and upon the instrumentalities of interstate commerce, used, operated and transported by certificated motor carriers transporting and delivering automobiles and household goods into, through and across the State of Arkansas by motor vehicle, and upon property in transit, moving across the State of Arkansas in interstate commerce.

The appellants have contended, and now contend, that the Arkansas *ad valorem* tax statute here involved, and the actions of the Arkansas taxing officials in making

assessments and attempting collections thereunder, are violative of and contrary to Article 1, Section 8, Clause 3, the Commerce Clause, and Section 1 of Amendment No. 14 to the United States Constitution, as assessing and levying a tax upon interstate commerce and the instrumentalities thereof, and as depriving these appellants of their properties without due process of law. That the assessment of *ad valorem* taxes upon interstate motor carriers, such as the appellants, by a single State likewise provokes similar action by other States, into, through and across which the same identical property may be used, operated or driven, thereby resulting in, and likely to result in, multiple State taxation of interstate commerce and the instrumentalities thereof, contrary to the Commerce Clause and the 14th Amendment to the United States Constitution; and that these matters directly affect the transaction of interstate business by the appellants, and directly affect their use of State highways being traversed and used by them pursuant to Certificates of Public Convenience and Necessity issued to them by the Interstate Commerce Commission, and directly affect their ability to conduct their business without interference or hindrance on the part of officials of the State of Arkansas and other States of the nation; and appellants assert that the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

The State of Arkansas has attempted to use an apportionment formula in arriving at each assessment here involved. This apportionment, as shown by the Record, page 165, utilizes, primarily and principally, system miles to miles traveled within the State of Arkansas. Appellants have contended, and now contend, that such apportionment based upon miles traveled is illegal for the purpose of arriving at the value of properties used in inter-

state commerce into, through and across the State of Arkansas, and, moreover, that such a formula may not be invoked against properties actually in transit across the State of Arkansas originating at a point beyond and destined to a point beyond, and that the use of such formula deprives these appellants of their property without due process of law, in contravention of the 14th Amendment to the Constitution of the United States.

Research fails to locate any decision of this Court directly in point, involving a state *ad valorem* tax assessed upon interstate motor carriers. This Court has upheld the validity of *ad valorem* taxes assessed and levied by States upon railroads (*Pullman's Car Co.* v. *Pennsylvania*, 141 U.S. 18), airplanes (*Braniff Airways* v. *Nebraska*, 347 U. S. 590), and ships (*Ott* v. *Mississippi Barge Line*, 336 U. S. 169) engaged in interstate commerce, but appellants believe a substantial and material difference exists in the legal problems posed by the instant case; and different principles of law should be applied to interstate motor carriers, using the highways of various States, including Arkansas. Ships, railroads and planes operate upon schedules. Regularity of service is their chief characteristic. Crews are regularly and constantly maintained for loading and unloading of passengers and cargo. Reservations in advance are usually necessary to insure accommodations. Public facilities, such as loading and unloading equipment, docks, wharves, terminals, airports, radar and safety towers and equipment, and airfields constructed with public funds, are utilized by ships and planes, and hence, these types of public carriers should be, and are, required to contribute toward the cost of such public facilities and their maintenance. These public facilities are used in addition to those owned or operated by these carriers, and permanently stationed in various States in which they do business. Agents are main-

tained to enable the public to transact business with the carriers. Contracts of carriage are entered into with the public. Railroads have permanent facilities throughout their vast systems, consisting of trackage, bridges, depots, stations, roundhouses, offices, repair facilities. All these have a permanent situs within a given State. Railroad cars are continuously operated within and across the States.

Here, appellants operate neither upon regular routes nor upon regular schedules. No public facilities other than public highways of Arkansas are utilized, and for their use appellants pay gasoline tax to the State of Arkansas and various States and the Federal Government. None of the appellants have any places of business within the State of Arkansas. No permanent facilities are maintained in Arkansas. In the case of automobile transporters, no contracts are entered into within the State of Arkansas. It is admitted, in this case, that none of the proceeds of the involved tax are dedicated or used by the State of Arkansas for the construction, maintenance and repair of the highways and bridges. The record fails to show that any of this tax is used for the cost of maintaining any governmental agencies having supervision over motor carriers. Additionally, these appellants purchase license plates from those States where reciprocity does not exist. In-transit fees are paid upon vehicles being driven across the State.

Additionally, it is to be recognized, and has been recognized by this Court, that ships, railroads and planes subject to *ad valorem* tax, all engage in local activities within the taxing State. Such local activities require permanent personnel, facilities and equipment. The record here reflects that the appellants employ no equipment, personnel or facilities within the State of Arkansas. No

wages are paid to employees in Arkansas. All contracts are executed without the State of Arkansas. The tax here sought to be levied involves automobile transporters and movers of household goods operating wholly in interstate commerce, with properties having no permanency within the State of Arkansas, and without that degree of permanency required to establish a tax situs within the State. No such situation exists as in the case of ships, railroads and planes, whose facilities, used in local activities, have acquired, and do acquire, permanency within each state into which they operate and within which they maintain facilities and transact business. Tax situs was not discussed by the Arkansas Supreme Court. The peculiar and different situations here obtaining should be resolved by this Court accepting jurisdiction of, and deciding, the issues in this case.

Appellants, therefore, assert that prior decisions of this Court, upholding the validity of an *ad valorem* tax upon railroads, ships and planes, cited by the Arkansas Supreme Court in its opinion, are inapposite and inapplicable. The *modus operandi* is here vastly different and distinct. The Arkansas Supreme Court failed to recognize this difference and distinction and grouped together all appellants—those transporting property within, through and across the State of Arkansas in motor vehicles, and motor vehicles being driven across the State of Arkansas in transit for delivery to points outside the State of Arkansas. As to the latter, it held that such vehicles are not subject to the "impact of the tax" but no specific finding of invalidity was made thereon. The Arkansas Supreme Court held all motor carriers and their properties subject to *ad valorem* tax, and thereby erroneously holding that these properties acquired a tax situs in Arkansas, and, while it recognized the various

groups existing, nevertheless, held this to be of no importance in determining the question of the validity or invalidity of the challenged tax.

Appellants submit that a genuine separation of the taxed local activity, based upon miles travelled in Arkansas, from the interstate process, is here impossible and if the instant tax be upheld, it is more likely and possible that other States through which such interstate commerce flows can, with equal right, impose similar levies, with the net result of prejudicing and unduly burdening interstate commerce, and thereby resurrecting the customs barriers which the Commerce Clause was designed to eliminate.

The issues involved in this appeal are similar to those raised by, and the decision of the Arkansas Supreme Court is contrary to, *Commonwealth of Pennsylvania* v. *Eastman Kodak Company*, 124 A.2d 100, Cert. denied, 352 U. S. 952; *Michigan-Wisconsin Pipe Line Company* v. *Calvert*, 347 U. S. 157; *Joseph* v. *Carter & Weekes Stevedoring Company*, 330 U. S. 422; *Railway Express Agency, Inc.* v. *Virginia*, 347 U. S. 359; *Gloucester Ferry Company* v. *Pennsylvania*, 114 U. S. 196; *Spector Motor Service* v. *O'Connor*, 340 U. S. 602; *New York Central Railroad Company* v. *Miller*, 202 U. S. 584; *Minnesota* v. *Blasius*, 290 U. S. 1; *Roy Stone Transfer Company* v. *Messner* (Penn.) 103 A.2d 700; *Lebeck* v. *State* (*Arizona*) 156 P.2d 720; *Commercial Carriers, Inc.* v. *Kentucky Tax Commission*, 321 S.W. 2d 42; *Felten Truck Lines, Inc.* v. *The State Board of Tax Appeals of the State of Kansas*, 327 P.2d 836; *Pfeiffer* v. *State*, 226 Ark. 825, 295 S.W. 2d 365. Appellants believe these cases are here directly in point and fully sustain the jurisdiction of this Court in this case. The cited State court decisions involve the validity of State *ad valorem* taxes upon properties used in interstate

commerce, attacked as impinging upon the Federal Constitution. The cited decisions of this Court were cited by the various State courts in support of their holdings that a State may not lawfully collect *ad valorem* taxes upon properties such as are here involved.

SUMMARY

The questions presented by this appeal are substantial, of public importance and in the public interest, and of importance and interest to the entire motor carrier industry engaged in the transportation of property by motor vehicles, over the highways, in interstate commerce. Interstate commerce and instrumentalities of interstate commerce are here vitally affected and directly involved. A burden upon interstate commerce is here threatened. Multiple State taxation of interstate commerce is here an issue. These appellants submit that the decision of the Supreme Court of Arkansas is erroneous and contrary to controlling principles of law, applicable to the issues and matters here involved.

This Court should, in the public interest, hear and determine the issues here involved, so that State taxing authorities and interstate motor carriers transporting property in interstate commerce over the highways, may definitely know their respective rights, liabilities and authority.

Respectfully submitted,

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PROOF OF SERVICE

I, Louis Tarlowski, one of the Attorneys for all named Appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ..... day of ....., 1961, I served a copy of the foregoing Jurisdictional Statement by personally delivering the same to Bruce T. Bullion, Esq., Union Life Building, Little Rock, Arkansas, Counsel of Record for the Appellee.

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APPENDIX A

In the Supreme Court of Arkansas

ARCO AUTO CARRIERS, INC., ET AL ..... *Appellants*

v. No. 2253

STATE, EX REL. BRUCE BENNETT
ATTORNEY GENERAL ..... *Appellee*

Opinion Delivered November 21, 1960

APPEAL FROM PULASKI CHANCERY COURT

SECOND DIVISION

SAM ROBINSON, ASSOCIATE JUSTICE

This action was brought by the State of Arkansas to enforce the collection of certain ad valorem taxes on trucks and equipment used by appellants in hauling for hire into and through the State of Arkansas in interstate commerce, automobiles and other merchandise. The issue is the validity of the tax. The chancellor held that the tax is valid, and the transportation companies have appealed. On motion of appellant Greyvan Lines, Inc., its appeal has been dismissed.

The tax is authorized by Ark. Stat. 84-601. The property used in interstate commerce and in issue here is divided into two categories: The vehicles used in hauling

merchandise into this State, and vehicles used in hauling merchandise through the State. Insofar as this case is concerned, there is no distinction. The vehicles used in both categories are engaged in interstate commerce. No provision of our Constitution is pointed out as prohibiting the act in question. But appellants vigorously argue that the statutes authorizing the tax, and also the action of the taxing officials of Arkansas in attempting to collect the tax, violate Article 1, Sec. 8, the commerce clause of the United States Constitution, and the 14th Amendment.

Conceding that the owners of the equipment involved in this case could not be compelled to pay an excise or privilege tax (*State* v. *American Refrigerator Transit Co.*, 151 Ark. 581, 237 S.W. 78), the fact remains that only an *ad valorem* tax is involved here, and the tax is on property that may be found in this State. It is immaterial that such property may not be moved on any regular route or schedule. Conceivably millions of dollars' worth of transportation equipment belonging to appellants could be in the State at all times, with the owners thereof being afforded the benefits and protection of a duly constituted, organized and functioning state government. And, moreover, the fact that no particular piece or pieces of such equipment would be here for any designated time should not relieve the owners thereof from bearing their fair share of maintaining and operating a state government, with all its ramifications, that serves all the people, including the owners of the transportation equipment found in the State, regardless of where such owners may be domiciled.

Of course, in the circumstances of the property not being in the State 100% of the time and subject to an *ad valorem* tax in other states, this State can only levy a tax based on a formula "which fairly apportions the tax

to the commerce carried on within the state." *Standard Oil Co.* v. *Peck*, 342 U.S. 382. In the case at bar it appears that such a formula was used, but if the formula is not fair, appellants have an administrative remedy. Ark. Stats. 84-609, 84-612, 84-115. Here, however, they did not pursue the administrative remedy to a final conclusion.

This case is controlled by three cases heretofore decided by the United States Supreme Court. First in the case of *Pullman's Car Co.* v. *Pennsylvania*, 141 U.S. 18. There the Court said: "For the purposes of taxation, as has been repeatedly affirmed by this court, personal property may be separated from its owner; and he may be taxed, on its account, at the place where it is, although not the place of his own domicil, and even if he is not a citizen or a resident of the State which imposes the tax. . . . It is equally well settled that there is nothing in the Constitution or laws of the United States which prevents a State from taxing personal property, employed in interstate or foreign commerce, like other personal property within its jurisdiction (Citing cases)."

Next is *Ott* v. *Mississippi Barge Line*, 336 U.S. 169. In that case it was held that the doctrine of the Pullman case is applicable to barges and towboats, moving freight in interstate commerce up and down the Mississippi River. *Ad valorem* taxes levied on such transportation equipment by Louisiana and the City of New Orleans were upheld.

The third case is *Braniff Airways* v. *Nebraska Board*, 347 U.S. 590. The issue was the authority of Nebraska to levy an *ad valorem* tax on aircraft, the owners of which were domiciled in other states, such aircraft being found in Nebraska but used in interstate commerce. The Supreme Court upheld the right of the State to collect a tax

properly apportioned on the basis of the use of the aircraft in Nebraska compared to the over-all use of such equipment.

As shown by the above mentioned cases, the United States Supreme Court has upheld an *ad valorem* tax when fairly apportioned on railway, barge line and aircraft equipment used in interstate commerce. There is no sound reason why such a tax is not equally valid when applied to vehicles used on the roads of the State. The State of Arkansas did not levy the tax on the full value of the equipment; a mileage formula was used. This formula determines the percentage of the total time the property may be found within this State and the percentage of time the assets of the appellants are employed here for purposes of *ad valorem* taxes. Appellants also attack here the formula used, but they did not exhaust their administrative remedy on such question.

Appellants contend also that Article 2, Sec. 23, of the Constitution of Arkansas prohibits *quasi* judicial commissions from making assessments for *ad valorem* tax purposes. In *McDaniel* v. *Texarkana C. & M. Co.*, 94 Ark. 235, 126 S.W. 727, the Court said: "The Legislature has the power to make all property in this State subject to taxation, except property exempted by the Constitution. It has the power to provide where and in what manner said taxes shall be levied and collected; and it may classify corporations and corporate interests for the purpose of taxation, and specify the mode of the assessment, levy and collection of taxes on corporate properties and interests." But appellants contend that Amendment No. 47 to the Constitution of this State prohibits the levy of an *ad valorem* tax by the State. Here the State has levied no *ad valorem* tax. An agency of the State has merely ascertained the value of the property. True, under the

provisions of Act 168 of 1953 (Ark. Stat. 84-614) the Commissioner of Revenues collects tax, but the same act provides that the State Treasurer shall pay the amounts so collected to the County Aid Fund and in turn shall distribute same to the various counties on a proportionate basis as set out therein (Ark. Stat. 84-615). It can readily be seen that this is a county tax merely administered by a State agency for the purpose of efficiency, and therefore is not in violation of Amendment 47.

Affirmed.

APPENDIX B

In the Supreme Court of Arkansas

ARCO AUTO CARRIERS, INC., ET AL ..... *Appellants*

v. No. 5—2253

STATE OF ARKANSAS, EX REL BRUCE BENNETT, ATTORNEY GENERAL ..... *Appellee*

Certificate of State Court as to Existence of a Federal Question

On motion of appellants, Arco Auto Carriers, Inc., Associated Transports, Inc., Automobile Transports, Inc., of Delaware, Central Truckaway System, Complete Auto Transit, Inc., E. & L. Transport, Inc., of Indiana, Fleet Carrier Corporation, Fugate & Girton Driveaway Company, Inc., Kenosha Auto Transport Co., Inc., King Transport, Truckaway Corporation, Robert R. Walker, Inc., United Transports, Inc., Auto Transports, Inc., Burnham's Van Service, Bekins Van Lines, North American Van Lines, Inc., National Van Lines, Inc., and Weathers Brothers Transfer Company, Inc., this Court, in addition to the orders made herein, orders it to be certified and made a part of the record in this case and of the judgment and entry of affirmance heretofore rendered and made herein, that in the prosecution of error from the Chancery Court of Pulaski County, Arkansas, Second Division, and in the arguments by brief, made in this Court on behalf of the appellants, it was insisted and relied upon by said appellants that the Arkansas Statutes 1947, Section 84-

601, *et seq.*, and the actions of State officials thereunder, is illegal and void and violative of Article 1, Section 8, Clause 3, of the Constitution of the United States, the Commerce Clause, and Section 1 of Amendment No. 14 thereto, and it became material to the determination of said case in this Court to determine said question so made by the appellants, which was determined adversely to said appellants, as appears in the entry and judgment of affirmance heretofore made herein.

It is hereby certified that this Court is the highest Court of law and equity in the State of Arkansas in which a decision of this case could be had.

The Clerk of this Court is directed to file this certificate and to make the same a part of the official record of proceedings had in this case.

/s/ Carlton Harris
Chief Justice
Supreme Court of Arkansas

APPENDIX C

SYNOPSIS OF ARKANSAS STATUTES RELATING TO ASSESSMENT AND TAXATION OF INTER-COUNTY MOTOR CARRIERS

All property, both real and personal, used in the operation of inter-county motor carriers (defined to be any person, firm, company, co-partnership, association or corporation engaged in the business of transporting for hire within, from or through this State by motor vehicle over the public highways of the State, passengers or freight, or both) shall be assessed for General Property or Ad Valorem taxation by the Arkansas Public Service Commission, and, each such carrier shall, on or before the first day of March of each year, make a report in writing to the Commission, in such form as the Commission shall prescribe, showing all property subject to assessment and taxation in this State; such report to truly show the amount, kind and value of such property as of January first, next preceding. (Sections 84-601 and 84-602, Arkansas Statutes, 1947.)

Carriers failing to make and file reports with the Commission on or before March 1st, unless for cause shown an extension of time for filing said report shall have been granted by the Commission, are subject to penalty of not to exceed $1,000, plus an additional penalty of not to exceed $100 for each day's delinquency after March 1st. (Section 84-607, Arkansas Statutes, 1947.)

If any carrier whose assessment is herein provided for shall neglect or refuse to make and file report with the Commission by the first day of March, or who makes such report and fails to show or shows erroneously any information called for which would be material to the determi-

nation of any fact to be ascertained by the Commission in connection with the amount, description, location and value of the property required to be assessed, the Commission shall inform itself as best it can on such undisclosed facts in order to discharge its duties with respect to the assessment of the property of such carrier and proceed to assess the same. (Section 84-608 Arkansas Statutes, 1947.)

In valuing the property of such carrier, the Commission shall take into consideration the value of all the property of the carrier as a unit, whether all or only a part of it is within this State, and shall ascertain the value of all property, tangible and intangible, including good will, easements and franchises, except the right to be a corporation; it being the purpose of this Act to include in the valuation every element that adds to the value of the line. (84-604 and 84-605, Arkansas Statutes, 1947.)

Having ascertained the true market or actual value of the entire property of the carrier, tangible and intangible, both within and without the State, the Commission will deduct therefrom the true market or actual value as ascertained from the information furnished by report or otherwise, of all real and personal property of such carrier not used in its motor carrier operation, and the remainder shall be treated as the true market or actual value of all its property, tangible and intangible, actually used or employed in its motor carrier operations. The Commission will then ascertain and fix the value of the total motor carrier operating property in this State by taking such proportion of the true market or actual value of the entire motor carrier operating property as its total lines within this State bear to the total lines both within and without this State, or as its total receipts or income from operation within this State bear to its total receipts or income

from operation both within and without this State, or by using such other recognized method, or combination of methods, as will, in the judgment of the Commission, result in a just and equitable apportionment to this State of its due proportion of the value of the total motor carrier operating property. (Section 84-610 Arkansas Statutes, 1947.)

Having determined the taxable value of the carrier operating property within this State (legally 20% of true market or actual value), the Commission shall give notice in writing to the owner, officer, agent, or attorney making such tax report, or if no tax report has been filed, then to the party or company against which the assessment has been made, showing the total taxable valuation so fixed by the Commission. (Section 84-612 Arkansas Statutes, 1947.)

If the owner of the property so assessed is dissatisfied with the action of the Commission, such owner, within 10 days from date of notice, may file with the Commission a written petition for a review of said assessment. All hearings on said petitions shall be had before the Commission or its agent prior to the first day of October. (Section 84-612, Arkansas Statutes, 1947.)

The taxable valuation of the carrier operating property in this State having been finally fixed, the Commission shall levy and extend against such valuation the average rate of Ad Valorem Levy prevailing throughout the State for the assessment year, and, 10 days before due date, shall certify same to the Commissioner of Revenues for collection. The Commissioner of Revenues shall forthwith notify each carrier against which a tax has been extended the amount and due date thereof. Such tax shall be payable to the Commissioner of Revenues on or before the 3rd Monday in April of the year next following

the year in which assessment was due to have been fixed. If such tax be not paid on or before the said 3rd Monday in April, the Commissioner of Revenues shall add a penalty of ten (10%) per centum thereon and mail to each such carrier so delinquent a statement of such tax and penalty. If such tax and penalty be not paid on or before the next following first day of October, the Commissioner of Revenues shall, in lieu of the ten (10%) per cent penalty, add to such tax a penalty of twenty-five (25%) per cent and certify the same to the Attorney General for collection. (Section 84-614, Arkansas Statutes, 1947.)